IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

AND

IN ITS INHERENT AND EXTRAORDINARY JURISDICTION

MISCELLANEOUS PETITION NO. 17 OF 2006

MINOO RUSTOMJI SHROFF & ORS ... PETITIONERS.

VS.

THE CHARITY COMMISSIONER ... RESPONDENT

AND

NOSHIR B. CAPTAIN &

NEVILEE K. MUKADAM ... INTERVENORS.

WITH

NOTICE OF MOTION NO. 1080 OF 2007

MINOO RUSTOMJI SHROFF & ORS. ... PETITIONERS.

VS.

THE CHARITY COMMISSIONER

OF BOMBAY. ... RESPONDENTS.

AND

MR. FREDDY DALI DIVECHA ... INTERVENOR.

WITH

CHAMBER SUMMONS NO. 1401 OF 2006

IN

MISCELLANEOUS PETITION NO.17 OF 2006

MINOO RUSTOMJI SHROFF & ORS ... PETITIONERS.

VS.

THE CHARITY COMMISSIONER OF BOMBAY RESPONDENTS.

MR. I.M.CHAGLA, SR. COUNSEL WITHMR. DARIUS KHAMBNATTA WITH MR. SHYAM MOHTA, MR. PARG KABADI AND MS. FALGUNI THAKKAR I/B. DOIJODE ASSOCIATES FOR PETITIONERS.
MR. PHIROZE C. AMROLIWALLA-INTERVENOR IN PERSON.
MR. PERCY PATEL - INSERVENOR IN PERSON.
MR. ZEREE B. JAHANGIR INTERVENOR IN PERSON.
MR. PRASHANT V. TIKARE I/B. MS.Z.S.IRANIK FOR INTERVENOR DR. SYRUS D. IRANI.
MR. P.D.BHUMGARA FOR INTERVENOR - DR. VIRAF JAHANGIR KAPADIA.
MR. KIRIT MUNSHI FOR INTERVENOR -KHOJESTE MISTREE, HISANG WANIA AND YAZDI DESAI.
MR. PARVEZ DRIVER INTERVENOR IN PERSON.
MR. SHAILESH PORIA FOR INTERVENOR - MR.FALI POCHA.
MS. UMA WAGLE FOR INTERVENORS - MR. NOSHIR CAPTAIN & MR. NEVILEE K. MUKADAM.
MR. S.G.DESHMUKH WITH MR. S.MORE FOR INTERVENOR
MR. FREEDY DALI DIVECHA IN NM. 1080/07.

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CORAM : A.M.KHANWILKAR, J.

DATE : April 5, 2007.

P.C.

1. This petition is presented by the Trustees of Funds and Immovable Properties of the Parsi Panchayat of Bombay (hereinafter for short referred to as the "said Trust".). The said Trust is duly registered under the provisions of the Bombay Public Trusts Act, 1950. This Court on June 18, 1910, formulated a Scheme for the Election of the Trustees of the said Trust in Suit No. 689 of 1906. That Scheme has been amended by this Court from time to time by Orders dated, 27th July, 1931, 7th February, 1935, 2nd April,1970, 16th June, 1992, 23rd October, 1992, 6th January, 1993, 1st April, 2005 and lastly on 21st August, 2006. The Scheme as it stood in terms of the last amendment or modification by this Court and presently in force, has been appended to the Petition as Exhibit "A". The Petitioners assert that it was felt that the Parsi Community had strong conscience that the trustees should be elected by the method of universal adult franchise. It is stated that Parsi community is highly literate and sufficiently intelligent to understand the issues involved in relation to the direct election of the Trustees. As

per the present Scheme, the Elected Register of the Anjuman Committee would be around 3000 in number. It is stated that having regard to the past voting pattern in relation to the election of members of the Anjuman Committee, the voters who are registered would be around 18000. However, out of those, not more than 6000 to 8000 members participate in the election process. It was generally felt that under the present Scheme an electorate of about 8000 would be called upon to elect 3000 persons out of possible 6000 to 7000 candidates. Having realised this anomalous position, these Petitioning Trustees took a conscious and informed decision that the appropriate method of electing the Trustees is by adopting principle of universal adult franchise. For that reason, the Petitioning Trustees have unanimously recommended that instead of electing members of the Anjuman Committee, every Parsi who is registered on the general Register shall have a right to directly vote at the election of the Trustees. Similarly, the methodology for donor members to participate in election has been culled out in the Scheme. It is not necessary to consider in the present proceeding the other contentious issues between the Trustees of the Anjuman Committee or the

other proceedings between them. Suffice it to observe that the Petitioning Trustees have unanimously sought amendment of the existing Scheme so that it will further the interest of the Trust and, which amendments will be in the general interest of community and the Trust. The Petitioning Trustees assert that they arrived at unanimous decision only after considering the views and the suggestions received from the Members of the Parsi Community. The gist of the proposed amendments to the present Scheme is culled out in Paragraph No. 9 of the Petition,

which reads thus :-

> "For the purpose of convenience, the gist of the proposed amendments are set out hereunder :-
>
> (a) The Register of the Elected Members of the Anjuman Committee shall be abolished. The Trustees shall make their best endeavours to ensure that a maximum number of Parsi Zoroastrians residing in Mumbai are enrolled on the General Register. Every person who is registered on the General Register at least 60 days before the date of election of a Trustee shall be eligible to vote at every election of a Trustee. Each such person so eligible to vote shall have one vote at each Trustee Election. Every person who is registered on the Donor Register at least 60 days before the date of election of a Trustee shall be eligible to vote at

every election of a Trustee. Each Donor shall have two votes at the election of a Trustee. Separate Ballot boxes and other arrangements shall be made for recording the votes of the General Register and the Donors Register.

(b) It shall be clarified, for the removal of doubt that subject to what is stated in Clause 13.1 of the Scheme, Petitioner No.1, Mr. Minoo Shroof, shall be entitled to continue in office of his original term expiring on 2nd August, 2010 but thereafter Petitioner NO.1 shall not be eligible to seek re-election.

(c) There shall be a Vice - Chairman, who shall preside at the meetings of the Trustees, in the absence of the Chairman. A their meeting held on 26th September, 2006, Petitioner NO.3, Mr. Dadi Engineer,has been designated as first Vice-Chairman of the Bombay Parsi Panchayat. Whenever Petitioner No.1 ceases to be the Chairman for any reason, whatsoever, Petitioner No.3 shall be appointed as Chairman. This arrangement is only for the present situation not intended to be treated as precedent.

(d) Presently, the Trustee seniormost in office is designated as Chairman. This practice shall be continued. However, if all the Trustees, other than the Trustee senior most in office, resolve to displace the seniority principle for that particular appointment;s the Chairman shall then be elected by the Board of Trustees by a majority vote (including the vote of the person elected as Chairman as well as the Trustee Seniormost in Office). Once a Trustee has been

elected as a Chairman, he shall continue as Chairman until the expiry of his term of the office as a Trustee.

(e) A Trustee seeking to resign his office shall address his letter of resignation to the Chairman. the Chairman shall convene a meting of the Trustees to consider such resignation. Such resignation shall become effective as and from the date upon which a change report has been filed to this effect under the provisions of Section 22 of the Act.

(f) Such other consequential amendments as are necessitated by the above amendments."

2. It is asserted by the Petitioning Trustees that the proposed amendments have been unanimously approved by all the six Trustees who are the Petitioners before this Court, in the meeting held on 4th October, 2006. A Copy of the Resolution passed in the meeting as also a copy of the scheme incorporating the proposed amendments suggested by the Petitioners has been placed on record. The modified scheme, which the Petitioning Trustees want this Court to approve is appended to the Petition as Exhibit "C". The hearing of this Petition, including the proposed amendments, which are to be considered by this Court, was duly notified by public notice, issued in the news paper,

Mumbai Samachar dated 10.12.2006, having wide circulation amongst the Parsi Community members. Admittedly, a Public notice dated 10th December, 2006, notified in Jam- E -Jamshed, having wide circulation amongst the Parsi Community Members, containing the proposed amendments. The said notice reads thus :-

" PUBLIC NOTICE
In the High Court of Judicature at Bombay
Ordinary Original Civil Jurisdiction
And
In its Inherent and Extraordinary
Jurisdiction
Miscellaneous Petition No. 17of 2006

In the matter of amendment of the Scheme for the Election of the Trustees of the Funds and Immovable Properties of the Parsi Panchayat of Bombay ("BPP").

Mr. Minoo R. Shroff & ors. ...Petitioners.
Vs.
The Charity Comissioner
of Bombay ...Respondent.

All the Members of the Parsee/Irani Zorastrian Community are hereby informed that all the Trustees of the BPP, Bombay, have jointly filed the above Miscellaneous Petition for sanction of proposed amendments to the Scheme for the Election of the Trustees of BPP. A gist the proposed amendments are as follows :-

(a) The Register of the Elected Members of the Anjuman Committee shall be abolished while Register of Donor Members will continue. The Anjuman Committee will now comprise of (i) All

members registered on the Donor Register as on effective date, (ii) All members registered on the General Register as on effective date. The Trustees shall make their best endeavours to ensure that a maximum number of Parsi Zorastrian, is enrolled on the General Register. Every person who is registered on the General Register at least 60 days before the date of the election of a Trustee, shall be eligible to vote at every election of a Trustee. Each such person so eligible to vote shall have one vote at each Trustee election (that is, a trustee shall be elected directly by members of the community, i.e. universal adult franchise). Every person who is registered on the Donor Register at least 60 days before the date of election of a Trustee shall be eligible to vote at every election of a Trustee. A Donor shall have two votes at the election of a Trustee. Separate ballot boxes and other arrangements shall be made for recording the votes of the General Register and Donors Register.

(b) It shall be clarified, for the removal of any doubt, that subject to what is stated in Clause 13.1 of the proposed Scheme, Chairman Mr. Minoo R. Shroff, shall not vacate office on completion of 21 years as a Trustee but shall be entitled to continue in office for his original term expiring on 2nd August, 2010 and thereafter, he shall not be eligible to seek a re-election.

(c) Presently, the Trustee senior most in office is designated as Chairman. This practice shall be continued. However, if all the Trustees, other than the Trustee senior most in office, resolve to displace the seniority principle for the particular appointment the Chairman shall then be elected by the Board of

Trustees by a majority vote (including the vote of the person elected as Chairman, as well as the Trustee Senior most in office). Once a Trustee has ben elected as a Chairman, he shall continue as Chairman until the expiry of his term of office as a Trustee.

(d) A Trustee seeking to resign his office shall address his letter of resignation to the Chairman. The Chairman shall convene a meting of the Trustees to consider such a resignation. Such a resignation shall become effective as and from the date upon which a Change Report has ben filed to this effect under the provisions of Section 22 of the Act, with the Charity Commissioner.

(e) Under the proposed scheme for Election of the Trustees, the deposits shall be forfeited, if, the Trustee candidate fails to secure at least 5% of the total votes cast at such an Election.

(f) Such other consequential amendments as are necessitated in line with the proposed change in the Rules of the existing Scheme, for the Election of the Trustees of the BPP.

. The above Petition has been peremptorily fixed for hearing and final disposal on 8th February, 2007. Any Member of the community who desires to be heard in respect of the proposed amendments to the Election Scheme, may intervene in the said matter before the Honourable High Court and also file an Affidavit and serve a copy thereof upon the Trustees well in advance of the aforementioned date of hearing. A copy each of the above Petition an Chamber Summons No.1401 of 2006 taken out therein maybe obtained from the office of Doijode Associates, Advocates,f 301, Banaji House, 361, Dr. D.N.Road, Flora Fountain, Mumbai 400 001, between 11.00 a.m. to 5.00 p.m. on any working day against payment of

necessary charges of Rs. 100/- per petition copy.

. Dated this 05 day of December, 2006.

sd/-
(B.T.Dastur)
Chief Executive.
On BEHALF OF THE TRUSTEES OF THE
PARSI PUNCHAYET, BOMBAY
209 DR. D.N.Road, Fort Mumbai 400 001."

3. Pursuant to the above notice, affidavits have been filed in this Court by the interested Members of the Trust. Besides, a Chamber Summons and Notice of Motion have also been filed before this Court. Chamber Summons No. 1401 of 2006 is taken out by the Petitioners for the following reliefs :-

(a) that pending hearing and final disposal of the above Petition, this Honourable court be pleased to suspend the process of constituting a New Anjuman Committee and holding of election of Trustees under the presently sanctioned Scheme;

(b) that pending the hearing and final disposal of the above Petition, this Hon'ble Court be pleased to clarify that Petitioner Trustee No.1 shall be entitled to continue in office of his original term expiring on 2nd August, 2010 or the date on which Trustees elections are held for all seven Trustees in terms of paragraph 12 of the above Petition whichever is earlier;

(c) that pending the hearing and final disposal of the above Petition, the Learned Charity Commissioner (Respondent

above-named) and/or any other officers under the Bombay Public Trusts Act, 1950 be directed not to entertain or proceed with any application or petition filed against any of the Petitioner Trustees Nos. , 4,5 and 6 for the removal and/or any declaration that the said petitioner trustees have ceased to hold office on the ground of their purported resignations;

(d) for ad interim reliefs in terms of prayer clause (a) to (c) above;

(e) for costs of this Chamber Summons;

(f) for such further and other reliefs as the facts and circumstances of the case may require; "

4. Notice of Motion No.1080 of 2007 has been taken out by the applicant- intervenor Mr. Freedy Dali Divecha, for the following reliefs :-

" (A) That the Applicant/Intervenor be allowed to intervene in the main Misc. Petition N.17 of 2006 filed before this Honourable Court by the Petitioners therein;

(B) The Petitioner therein maybe directed to join the applicant/ Intervenor as a Party Respondent to the Petition.

(C) That the Applicant/ Intervenor be allowed to file the detailed reply to the Main Petition No.17 of 2006 filed before this Honourable Court by the Petitioners therein;

(D) And for such other Orders/ reliefs as this Hon'ble court may deem fit and proper be passed; "

5. Affidavits have also been filed by the interested persons either in support of the proposed amendments and/or to oppose the same, by the following persons.

1. Dr. Syrus Darvish Irani

2. Dr. Viraf Jahangir Kapadia

3. Joint affidavit of :

i) Mr.Khojeste Mistree,

ii) Mr. Hosang N. Wania

4. Mr. Parvez H.Driver

5. Mr. Fali Pocha

6. Mr. Rustom S. Tirndaz.

7. Percy Russi Patel

8. Zeree B. Jehangirji

9. Joint affidavit by

i) Mr. Khjeste Mistree,

ii) Mr.Hosang N. Wania,

iii)Mr. Yazdi H. Desai.

10. Joint affidavit by

i) Noshir Burjorji Captain,

ii) Nevilee Kersi Mukadam.

11. Mr. Phiroze Cawasji Amroliwalla

6. Besides filing affidavits, all interested parties, whether having filed formal application for intervention or otherwise were permitted to address the Court during the hearing. The Members who availed of that opportunity are :- (1) Mr. Rustom S Tirandaz. (2) Dr. Viraf Jahangir Kapadia, (3) Mr.Khojeste Mistree, (4) Nevilee Kersi Mukadam, (5) Freddy Dali Divecha.

7. Before considering the matter further, it would be apposite to refer to the stand taken by these members at the hearing. Mr. Tirandaz, reiterated the stand taken in his affidavit that the Petitioners were attempting a half way approach to the principle of universal adult franchise. According to him, it is unfair to provide for two votes to the donor members. He further suggested that there was no tangible reason to provide the age limit of 21 years, as eligibility to cast votes. He further submitted that there was no reason to provide for pre-qualification, such as

number of terms and the like for being Trustee. He further submitted that he was completely in support of the adoption of principle of universal adult franchise and for providing mechanism of direct election. He submitted that the election process, on the basis of proposed change, will have to be concluded within a specified time, the time to be specified by this Court.

7A. . Dr. Viraf Jahangir Kapadia submitted that there was no good reason forthcoming for bringing about the amendments to the Scheme in such quick succession. At the same time, he submitted that he was welcoming the decision of the Trustees to recommend amendments so as to introduce the mechanism of direct election and exercise of universal adult franchise. He further submitted that there was no propriety in permitting two votes to donor members. It is submitted that if the person has an intention to donate, there is no reason why such a person should expect a return in favour of being bestowed with two votes as a donor member. He also offered comments with regard to the proposed amendments regarding the provision for acceptance of resignation of the

trustee. He submitted that there should be some safeguard to intimate change on account of resignation.

7B. . Arguments were canvassed on behalf of Mr. Khojeste Mistree, Mr. Hoshang N. Wania and Mr. Yezdi H. Desai that the present scheme of electing Anjuman Committee is like a direct election. The Anjuman Comittee acts as a safeguard. With displacement of the Comittee there wil be possibility of abuse of power. According to these members, if at all any change is to be brought about, there has to be provision of one vote for one man/voter. It was also argued on their behalf that provisions regarding seniormost Trustee to be the Chairman of the Board is a well established convention. There is no reason to make any modification thereto, even in the slightest manner suggested by the Petitioner. It was also contended that the proposed change suggested by the Petitioners is not bona fide. It is only with a view to do away with the Elected Anjuman Committee, which event has happened in the month of February,2007. Besides, they have reiterated the stand taken in the affidavits filed on their behalf at page No. 133

onwards. It was also argued that the petition filed by the present petitioners is not maintainable. According to these members, the proposed amendment is silent as to on what days of the week, the polling should be held. It is their apprehension that the polling day will be so arranged, as to make it impossible for a large number of electorates to participate in the election. It is contended that in fact the decision taken by the petitioning Trustees is without authority. It was suggested that the day of Polling or Ballot should be so arranged that there will be turn out of maximum members to vote at the election.

7C. . The next argument was on behalf of Mr. Parvez H. Driver. According to him the Anjuman Committee is working well and there has been no reported logistical problems so far. Therefore, there was no reason to displace the present dispensation by adopting new regime of direct election on the principle of universal adult franchise. According to him, the Petitioning Trustees ought to have consulted the Anjuman Committee and ought to have taken the said Anjuman Committee into confidence before recommending

any change.

7D. . The next member to address was Mr. Falli Pocha. He submitted that the present Committee should be allowed to continue. He was however in favour of principle of universal adult franchise.

7E. . Arguments were also advanced by Neville K. Mukadam. It was suggested that election should be concluded by providing time bound programme. It was next contended that till the new regime or newly elected Trustees take over the office of the Trust, the present Trustees be permitted to continue. It was, however, contended that if this Court were to accept the proposed change, that would run contrary to the Orders passed by Justice Mohite on 21st August, 2006 and moreso, when the first part of that Order has already been acted upon by electiing Anjuman Committee in February, 2007.

7F. . The next member to address the Court was Mr. Freddy Dali Divecha. According to him, there has to be a provision of one vote for one voter. It is argued that the fact that some one has given

donation should not create any right in favour of such person to claim any special treatment. It was submitted that there is nothing wrong with the present system of indirect elections. Moreovr, even if the concept of principle of universal adult franchise is to be adopted, that can be implemented even in case of present set up and it was not necessary to displace the present set up. According him, the elected Anjuman Committee can elect the new Trustees.

7G. Besides making oral submission, written submissions have been filed on behalf of the intervenors Mr. Freeddy Dalai Divecha and Noshir B Captain.

7H. . The petitioners have filed further affidavit dated 4th April, 2007 to place on record that the petitioners were agreeable for suitable modifications in the proposed scheme already submitted for consideration before this Court. In this affidavit, it is agreed that the age limit can be reduced to 18 years for the purpose of eligibility. Suitable change has been indicated in the definition

of "Parsi". The Petitioners have also accepted that the present Trustees shall vacate the office simultaneously with the newly elected Trustees being elected to the office. The Petitioners have suggested appropriate change in Rule 13.1 to reflect this position. The Petitioners have also recommended further change in Rule 52 which relates to resignation and the day from which it should take effect. The Petitioners have also agreed to introduce Rule 13.3, after Rule 13.2, so as to make it clear that the elections shall be held on any Saturday and/or Sunday. There are two other changes noted in this affidavit which are not forming part of the original amendment. According to the Petitioners, the same had remained to be incorporated through oversight.

8. Having gone through the relevant material produced on record by the parties and considering the oral submissions canvassed across the bar, the first question that needs to be addressed is -

> "Whether this Court has jurisdiction to entertain the present petition so as to undertake the exercise of modifying the

existing Scheme sanctioned by it in the Suit"

In my opinion, this issue is no more res integra.For it is rightly argued by the Petitioners, that issue of Jurisdiction has been raised on every occasion when such amendment to the Scheme was proposed by the Trustees at the relevant point of time. The Issue of jurisdiction has been considered by the Single Judge of this Court in an unreported decision, rendered on 2nd April, 1970 in Miscellaneous Petition No. 270 of 1969. The Issue has been examined from two different angles. Firstly, the Court proceeded to answer the same relying on the relevant Rules in the Scheme, such as Rules 90, 91, 94, 95 of the sanctioned Scheme, and the like to hold that in terms of the said provisions, this Court will have jurisdiction to entertain the petition for alteration, addition or modification of the provisions of the Scheme. The Court then went on to examine the objection regarding the jurisdiction in the context of the provisions of Section 50 and 80 of the Bombay Public Trusts Act. The Court held that those provisions were not sufficient to oust the jurisdiction of this Court for entertaining the petition for such relief of addition, alteration or

modification in the provisions of the Scheme. The learned Judge has also adverted to the decision of the Apex Court reported in AIR 1961, S.C. 1206 IN CASE BETWEEN RAJE ANANDRAO VS. SHAMRAO, to reject the objection about jurisdiction. Once again similar contention regarding jurisdiction came up for consideration before another Single Judge of this Court in the case of MINOO RUSTOMJI AND ORS. VS. CHARITY COMMISSIONER, REPORTED IN 2005 (2) MH. L.J. PG. 1135. Relying on the decision of the Apex Court in the Case of RAJE ANANDRAO (Supra), it has been held that this Court has jurisdiction to entertain the petition such as the present one and decide the same. In the said decision, in paragraph No. 10, the Court went on to observe that notwithstanding the provisions of Section 52 of the Bombay Public Trusts Act, this Court shall continue to have jurisdiction to alter, modify or vary the Scheme. In this decision, besides relying on the provisions of Section 50, 52, 85, 86 of the Bombay Public Trusts Act, reliance was also placed on Section 50A of the Act to contend that the Charity Commissioner alone will have the right to frame a Scheme or to vary or alter the same. However, that plea has been negatived. In addition to the reasons

recorded in the decision of MINOO RUSTOMJI'S CASE (Supra), even on plain reading of Section 50A(3) of the Act, it would appear that the Charity Commissioner can modify the Scheme in respect of the Trust which has been framed "by him". In other words, the Scheme framed by the High Court in a Suit will be outside the purview of the powers of the Charity Commissioner under Section 50A (3) of the Act. Accordingly, I have no hesitation in rejecting the objection regarding the jurisdiction of this Court to entertain the present petition.

9. The next issue that needs to be addressed is -

"Whether the Petitioners have locus to file this petition"

This issue is raised on the premises that the four petitioners, amongst the six petitioning trustees had tendered their resignation on 19th June, 2006. They had sent their resignation to the Chairman of the Board of Trustees. However, it is the case of the Petitioners that before their resignations were accepted or was given effect to, they withdrew the

same on 28th June,2006 due to the persuasion of members of the Committee and the Trustees. In other words, it is asserted that the resignations never came into effect. For which reason, they would continue to be the Trustees. On that basis, the Petitioners claim that they were competent to pass resolution recommending the modification of the scheme which is the subject matter of this petition, as well as for filing this Petition. That Resolution was unanimously passed on 4th October,2006 and soon thereafter the petition is filed in this Court on 19th October,2006 by all the six petitioning Trustees.

10. According to the Intervenors, however, the concerned Petitioners having tendered resignation, had ceased to be the Trustees - could not have participated in the affairs of the Trust much less to be party to the Resolution, dated 4th October, 2006; whereby the proposed amendments to the Scheme have been recommended. On the same analogy the said Petitioners are incompetent to institute this Petition before this Court. The argument seems to be attractive. However, it is well established position that the resignation would come into effect on the day

of its acceptance by the Competent Authority. Merely forwarding the resignation letters to the Chairman by the concerned Petitioners on 19th June, 2006 would not result into cessation of office by those Trustees. There is nothing on record to suggest that, in fact, the said resignations forwarded by the concerned Petitioner were accepted before 4th October,2006 or even thereafter. Significantly, the question whether any change has occurred on account of such resignation, is an issue which will have to be answered by the appropriate Authority under the Provisions of the Act. It is seen that similar grievance was considered by this Court in Chamber Summons No.899 of 2006 and this Court, in its Order dated 21st August, 2006, has made it clear that the said issue will have to be considered by the Appropriate Authority. So long as the Competent Authority has not accepted that plea, that the concerned Petitioners stood resigned on or before 4th October, 2006 or at any time thereafter, before institution of this petition, the question of Petitioners being ineligible to participate in the affairs of the Trust and to participate in the meeting in which Resolution came to be passed on 4th October,

2006 or for that matter to institutute this Petition on 19th April, 2006, does not arise. If it is so, the objection regarding locus of any of the Petitioners cannot be put in issue at all. As the resolution was passed unanimously in the meeting attended by all the Petioning Trustees, the same will have to be taken to its logical end.

11. That takes me to the next crucial aspect as to what should be the scope of inquiry of this proceeding. Even this question, to my mind, is no more res integra. The Division Bench of this Court in Appeal No. 1137 of 1987, has answered this issue. In Paragraph 12 of the said decision, it is observed that " Clause 98 of the Scheme does not give authority to this Court or complete free hand to frame a fresh Scheme altogether which may not be supported by the majority of Trustees or a majority of the members of the Anjuman Committee". The Division Bench then went on to observe that "even if we assume that the Court has power to amend or alter the proposals before it submitted by the Trustees or by the members of the Anjuman Committee, the Court should be loath in exercising such powers to ignore the proposals placed

before it by the Trustees and frame alltogether different Scheme Suggested before it by some other Authority". In the case of MINOO RUSTOMJI (Supra), the Single Judge of this Court, while relying on the exposition in paragraph No. 12 and 13 of the decision of the Division Bench in Appeal No.1137 of 1987, proceeded to observe that the Court has no power to frame a completely Fresh Scheme which is not supported by the majority of the Trustees or majority of the members of the Anjuman Committee. As this has been the consistent view of our High Court, there can be no doubt that the scope of enquiry in the present petition will have to be essentially confined to the proposals submitted by the Trustees and not by entertaining any other plea canvassed before this Court by persons other than the Trustees. In other words, the enquiry in the present petition will have to be confined to the justness or appropriateness of the proposed amendments suggested by the Petitioning Trustees. The nature of amendments proposed by the Petitioners have been culled out in paragraph No. 9 of the Petition which have been reproduced in extenso in the earlier part of this Order.

12. On considering the rival submissions of the parties and on going through the material on record, I have no hesitation in observing that the proposed amended Scheme as has been put forth by the Trustees is in the general interest of the Trust and would further the interest of the Trust. There can be no doubt that the Petitioning Trustees have unanimously decided to recommend the change in the Scheme only after due deliberations. Indeed, according to the intervenors, there is no need to effect frequent changes. However, in my view, merely because some change has been brought about recently on account of the Order passed on 1st April, 2005, that will be of no avail. What is relevant to be noted is, that the said Order is passed on proposal for Change, submitted before this Court in the year 2000 by way of Misc. Petition No. 4 of 2000. In any case, assuming that Trustees were to recommend the Change in quick succession, that by itself can be no reason to throw out the proposal for amendment or Change in the Scheme. The Court will have to consider as to whether the proposed change is in the general interest of the Members of the Community and would also further the interest of the Trust. If that is the intent behind

the proposed Change, then there can be no tangible reason to disallow such a change.

13. It was also suggested on behalf of the intervenors that the proposed change is suggested with a mala fide intention, only to displace the present dispensation; particularly, the elected Anjuman Committee which has been elected in February, 2007, in terms of the Order passed by this Court on 21st August, 2006 in Chamber Summons No.114 of 2006. Even this argument does not commend to me. It is too much to assume that the proposed amendment is intended only to displace the newly elected Anjuman Committee. The proposed amendment is not of the kind which would bring about the Change only for a limited period or for matters pertaining to the election of the Anjuman Committee as such. The proposed amendment, as is intended, if given effect to, will prevail for posterity. The fact that elections of Anjuman Committee have been concluded in February,1987, in terms of Order of this Court, will be of no avail. For, this Court will have to consider as to whether the proposed change, is in the general interest of the Trust. It will be a different matter that on account

of acceptance of the proposed change by this Court, the logical effect consistent with the amended provisions, will be to install a new set up or establishment. But that is the inevitable consequence and in the process the existing dispensation will get displaced. Such consequence is associated with any process of Change. Significantly, the Order passed by this Court in Chamber Summons No. 114 of 2006 was on the basis of provisions as it obtained in the scheme at the relevant time. That decision was invited on entirely different situation. Suffice it to observe that the said Order cannot come in the way of considering the proposed amendments to the Scheme and to take that issue to its logical end. Thus understood, it is incomprehensible that the proposed amendment is not bonafide or is only intended to displace the existing set up, as is contended by the intervenors opposing the proposed amended scheme.

14. That takes us to the efficacy of the proposed amendment, which will have to be considered in the context of the gist given in Paragraph 9 of the Petition. The first proposal is that, the Register of the elected members of the Anjuman Committee shall be

abolished. As mentioned earlier, if change in the scheme now propounded, of universal adult franchise and of direct election of Trustees, were to be accepted by this Court, it would logically follow that the existing dispensation of the Anjuman Committee will have to be displaced. Accordingly, the proposed amendment under consideration will be subject to the acceptance of change in Scheme recommended by the Petitioning Trustees.

15. The next proposed amendment in terms of paragraph 9(a) is that the Trustees shall make their best endeavour to ensure that the maximum members of the Parsi Zorastrians, residing in Mumbai are enrolled on the general Register. There can be no difficulty in straight away accepting the proposed amendment. That will be in the general interest of the community and also further the interest of the Trust.

16. The next amendment suggested is that every person who is registered in the general Register at least 60 days before the date of election of a Trustee shall be eligible to vote at the election of a Trustee. As such person shall have only one vote,

there is no difficulty in accepting even this proposed amendment.

17. The next amendment suggested is that every person who is registered on the Donor Register at least 60 days before the date of election of Trustee, shall be eligible to vote on every election of a Trustee. Further, each donor shall have two votes at the election of a Trustee. This amendment was seriously debated before this Court. There was division of opinion between the Petitioners and the intrvenors on this count. According to the intervenors, even if the direct election mechanism was to be accepted, even in that case there was no justification to provide two votes to the donors at the election of a Trustee. It was argued that a donor who has given donation is not expected to seek returns, that too by way of additional vote in relation to the election of the Trustee. Besides, it would be very unfair for the system to permit the donor to cast two votes merely because he happenes to have donated specified amount at one point of time. As per the Scheme, the donor would enjoy the facility

of two votes for any number of elections, even if he has had contributed one time minimum specified donation as his name will continue to be on the donor register. It was also argued that the register of Donor members is to the extent of 1168 and if two votes are granted to the Donor Members, there was every possibility that their votes would then become decisive, creating an imbalance in providing true representation to the general members. Even though the argument pressed before me on behalf of the intervenors is attractive, however, it is not open for me to go into the said aspect for more than one reason. In the first place, the proposed amendment does not seek to introduce the provision of providing two votes to the donor members at the election of the Trustees for the first time. For, that provision was introduced by way of previous amendment, which has already been accepted by this Court while considering M.P. No. 4 of 2000, decided on 1st April, 2005. From the dictum in paragraph No. 3(b) read with Paragraph 13 of the Judgment of that decision, it necessarily follows that the issue of donor Member will enjoy two votes at the election of the Trustees, came to be approved by way of previous amendment.

Therefore, that issue cannot be reagitated in the present petition.

18. In so far as the appropriateness of the Change to introduce direct election and exercise of universal adult franchise is concerned, it was argued that even that question was considered on the earlier occasion in the case of MINOO RUSTOMJI (supra). It is argued that this aspect has been dealt with in paragraph No. 12 of the said Judgment. Indeed, in paragraph 12, in the case of MINOO RUSTOMJI (supra), Single Judge of this Court has adverted to the argument that there was contentious issue of Universal Adult Franchise. The Court then went on to observe :- "plainly speaking there could be no doubt that the Adult Franchise is the best method by which an election ought to be carried out. It is also no doubt true that by merely giving donation any person ought not and should not be permitted to become a member of Anjuman Committee". But, eventually the Court examined the matter only in the context of the proposed change recommended by the Trustees, following the exposition of the Division Bench of this Court in Appeal No. 1137 of 1987 (supra). The issue of Adult Franchise was raised on

the earlier occasion but not considered. Therefore, the issue will have to be addressed as it is specifically proposed by the Trustees. This is so because, on the earlier occasion this Court did not consider that aspect on merits as that was not the recommendation of the majority of the Trustees. However, it is now, for the first time, the Trustees have unanimously resolved for bringing about the Change by introducing the direct election and universal adult franchise in the election of the Trustee. It is only now, this Court would be required to examine the justness of the proposed amendment. On considering the material on record, I have no difficulty in accepting the proposed Change of direct election and exercise of Universal Adult Franchise for election of the Trustee. It is seen that the same was a contentious issue pending consideration since long and the Trustees in their wisdom have now unanimously resolved that it is imperative to introduce such a Change, even if it is too late. The arguments that there is nothing wrong with the present dispensation of Anjuman Committee can be no basis to answer this issue in the negative. Especially, when the proposed amendment is supported by all the Petitioning Trustees

unanimously. It will be inappropriate for this Court to take other view or not to approve such amendment. Taking any other view would result in sitting over the wisdom of the Trustees who are unanimous on the issue and have advisedly recommended change after due deliberations.

19. The other proposed Change is to provide for separate ballot boxes and other arrangement for recording the votes of general register members and the donors register. However, this Change being consequential one, will have to be accepted.

20. The other proposed change in terms of paragraph 9 (b) of the petition is for clarification that the Petitioner No.1 shall be entitled to continue in the office in his original term expiring on 2nd August 2010 and thereafter shall not be eligible to seek reelection. This clarification is sought on the premiss that the 3rd term of the Petitioner NO.1 would expire in August, 2010, when he completes 21 years of Trusteeship. No person who has been Trustee for three consecutive terms or for 21 years in the aggregate, shall be eligible for reelection to the post of

Trustee, in terms of Clause 13.2. However, in my view, the Petitioner No.1 will naturally be governed by the provisions that would come into force. In other words, if the Petitioner is ineligible to seek re-election in the ensuing election for the post of Trustee, to be held in terms of the approved scheme, that cannot be helped. Accordingly, there is no need to issue any clarification as desired in terms of paragraph No. 9(b).

21. The next change in terms of paragraph No. 9(c) is that there shall be a Vice-Chairman who shall preside over the meeting of the Trustees in the absence of the Chairman. That amendment will have to be accepted being reasonable one. If the Chairman is absent at the meeting, it is not necessary to disband or adjourn the meeting. If the meeting can be otherwise continued, the Vice-Chairman can be permitted to chair the meeting in absence of the Chairman. Accordingly, that change will have to be accepted.

22. In the same paragraph No. 9(c), it is stated that in the meeting held on 26th September, 2006, the

Petitioner No. 3 has been designated as the First Vice- Chairman and shall continue to hold the office till the newly elected Trustees take over the office. Needless to reiterate that the tenure of the existing Trustees will come to end consequent to the newly elected Trustees taking over the office.

23. In this paragraph No.9(c) of the Petition, it is noted that whenever the Petitioner NO.1 ceases to be the Chairman for any reason whatsoever, the Petitioner No.3 shall be appointed as the Chairman. However, in view of the dispensation that will come into force as a consequence of the amended Scheme, naturally, the elections will have to be held to the post of Trustees and on newly elected Trustees taking over the office, the present Trustees will cease to hold their office simultaneously. In any case, no serious argument has been made on this aspect. Obviously, the proposed amendment was suggested as it was apprehended by the Petitioners that the decision of this petition may take some time before which the present Chairman would cease to be the Chairman. Accordingly, it is not necessary to dilate on this matter any further.

24. The next amendment suggested in the Petition in terms of paragraph 9(d) is in relation to Rule 51 of the amended Scheme. Rule 51 of the amended Scheme reads thus :--

> "51. Trustees shall designate the Trustee seniormost in office as the Chairman who shall preside at all meetings of the Trustees. Provided however, if all the Trustees other than the Trustee seniormost in office, resolve not to designate the Trustee seniormost in office as Chairman,- then simultaneously the Trustees shall elected by a majority vote (including the vote of the Trustee seniormost in office) one of the Trustees as the Chairman. A Trustee elected as a Chairman shall continue to be so designated until the expiry of his term of office."

In my opinion, this a reasonable provision that is sought to be introduced by way of an amendment. However, it was submitted that there was no need to alter the existing provision in the scheme, which

provides that only the seniormost Trustee shall be the Chairman. The question whether the seniormost member of the Board shall be the Chairman, is a valid practice came up for consideration in the case of HOMI P. RANIAN & ORS. VS. ERUCH B. DESAI & ORS. REPORTED IN 1996(2) BOM.C.R. 577. In paragraph 13 of this decision, this Court has taken a view that it is a healthy practice followed by Parsi Panchayat in appointing the Seniormost Trustee as a President and avoiding election and groupism and factionalism, inevitable arising from the election. It was argued that the amendment now suggested would carve out an area for deviation from the established practice and convention. This submission in my view is misplaced. It overlooks that on plain reading of the Rule 51, it leaves no manner of doubt that the Scheme is that the seniormost member shall preside over as a Chairman of the Board. That is the rule. It is only by way of exception it is provided that if all the Trustees other than the Trustee seniormost in the office, resolve not to designate the seniomost Trustee in office as Chairman, they can elect some other Trustee by majority vote. The amendment under consideration if accepted, as is rightly submitted on behalf of the

Petitioners, will address the unforseen possibilities where the seniormost member in the office, on account of his inability due to health or otherwise, could not be considered fit to act as a Chairman. In such a case, all the remaining Trustees agreeing for a different Chairman, can vote for other person to be appointed as a Chairman of the Board. Indeed, this may be a slight departure from the convention followed so far. But perhaps such a provision would obviate unforseen stalemate situation likely to be caused if the seniormost member was considered to be unfit to act as Chairman due to his health reason or otherwise to counterbalance the unforseen situations, if all the Trustees except the seniormost Trustee are ad idem on that aspect, surely such a provision cannot be stated to be unjust or undemocratic. As observed earlier, that course is only an exception and not a rule.

25. The other proposed change in Paragraph No. 9(d) is in the context of Rule 52 of the amended Scheme. During the course of arguments, however, the Petitioners having realised the difficulty, have now suggested the modified provision, which reads thus ;-

RESIGNATION OF A TRUSTEE:-

"52. A Trustee desirous of resigning his office shall address his letter of resignation to the Chairman. If the Chairman himself is desirous of resigning his office as a Trustee, he shall address his letter of resignation to all the other Trustees. A meeting shall be convened urgently of all the Trustees to table any such resignation. Such resignation shall become effective as and when the date on which a change report has been filed to this effect under the provisions of the applicable law with the office of the Charity Commissioner at Mumbai. A Trustee shall be at liberty to withdraw his letter of resignation at any time prior to such resignation becoming effective as provided herein". (Emphasis supplied)

This modified amendment, in my opinion, cannot be accepted in toto. It is established position that the Change takes place on the happening of an event, when the act is complete (See para 11 of Chembur Trombey Education Society & Ors Vs. D.K.Marathe & Ors,

reported in 2002(3) Bom.C.R. 161). In so far as resignation is concerned, it is well established position that it becomes effective on its acceptance by the appropriate Authority. Having realised this difficulty the Petitioners have suggested modification to Rule 52. The modified Rule 52 is reproduced in paragraph 3(c) of the affidavit, which reads thus :-

> "52. A Trustee desirous of resigning his office shall address his letter of resignation to the Chairman. If the Chairman himself is desirous of resigning his office as Trustee, he shall address his letter of resignation to all the other Trustees. A meeting shall be convened urgently of all the Trustees to table any such resignation. Such resignation shall become effective as and when the same is tabled in the meeting, so convened. A Trustee shall be at liberty to withdraw his letter of resignation at any time prior to such resignation becoming effective as provided therein" (emphasis supplied).

However, even the modified Rule 52 is not consistent with the established legal position. Acordingly, even the modified Rule No. 52 will have to be redrafted to mean that if a Trustee decides to resign, he may send his resignation to the Chairman. The Chairman in turn will then convene an urgent meeting of all the Trustees and table the said resignation before the Board. It is only after the Board accepts the resignation, the same ought to take effect and not in earlier point of time. In other words, mere tabling of the resignation in the meeting will not be sufficient, but the resignation will have to be accepted by the Board of Trustees so as to make it effective. The learned Counsel for the Petitioners fairly accepts that this change can be made in the proposed Rule No. 52.

26. For the reasons already recorded earlier, it is not necessary to elaborate any other issue as I have confined the discussion in this Judgment to the amendments of the Scheme proposed by the Petitioning Trustees. Accordingly, the Petition ought to succeed in terms of prayer clause (a) and (e) subject to above discussion.

27. While parting with this judgment, I may once again advert to the affidavit of the Petitioners dated 4th April, 2007. In this affidavit, in Paragraph No. 3(a), the Petitioners have accepted that the age limit for membership will have to be reduced to 18 years and accordingly modified definition of PARSI as reflected in that paragraph will have to be inserted in the amended Scheme, as approved by this Court. Similarly, in relation to Rule 13.1, the modified provision as extracted in paragraph 3(b) of this affidavit will have to be inserted in the amended Scheme, as approved by this Csourt. Similarly, Rule 13.3., mentioned in paragraph No. 3(d) will have to be inserted in the amended Scheme as approved.. In Rule 8 of the amended Scheme, the words referred to in paragraph No. 3(e) of this affidavit "or a Notary Public or Special Executive Officer", will have to be inserted at the end of Rule 8. Besides, the words in paragraph No. 4 "and the election be proceeded with until a new President", will have to be inserted in Rule 21(c)(iii) of the amended Scheme. In so far as Rule 52 is concerned, I have already dealt with this aspect in the earlier part of this Judgment. Accordingly,

the said Rule extracted earlier, will have to be suitably changed by deleting the words "tabled in the meeting", to be replaced by words " accepted in the meeting", in the forth sentence thereof.

28. After having dealt with the proposed amendments, the next question is to ensure that the steps are taken by the existing Trustees to comply with the formalities, consistent with the amended Scheme, in terms of this Order, so as to ensure that election process to the post of all the seven Trustees is commenced and completed expeditiously. In any case, to ensure that the newly elected Trustees will be able to take over the office of the Trust, not later than six months from today. The first step to be taken by the present dispensation is to enroll as many Parsis within Mumbai. That exercise will have to be completed not later than end of May, 2007. The Petitioners have agreed to comply with said arrangement.

29. Consequently, this Petition is made absolute in terms of prayer clause (a) and (e), subject to above discussion. In view of this Order, even the

accompanying notice of motion and chamber summons stands disposed off.

30. At this stage the learned Counsel for the intervenors prays for stay of operation of this Judgment and Order. I fail to understand as to why the operation of the whole Judgment and Order should be stayed. It was pointed out to the learned Counsel that the preparatory arrangement of enrolment work will proceed for the time being till the end of May,2007; for which reason it is not necessary to stall the further activities in terms of the Order passed today, approving the proposed amendments of the Scheme. The Counsel, however, insisted that the entire judgment and Order should be stayed. It is not possible to accept the submission of stay of the entire Judgment and Order. Hence, the prayer for stay stands rejected.

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[A.M.KHANWILKAR, J.]